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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,462	01/28/2004	Masahiko Nagai	JP920020225US1	3166
56687 7590 02/02/2009 Driggs, Hogg, Daugherty & Del Zoppo Co., L.P.A. 38500 CHARDON ROAD DEPT. LEN WILLOUGHBY HILLS, OH 44094				
EXAMINER				
SITTA, GRANT				
ART UNIT		PAPER NUMBER		
2629				
MAIL DATE		DELIVERY MODE		
02/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/766,462

**Applicant(s)**

NAGAI, MASAHIKO

**Examiner**

GRANT D. SITTA

**Art Unit**

2629

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-20.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Sumati Lefkowitz/  
Supervisory Patent Examiner, Art Unit 2629

/Grant D Sitta/  
Examiner, Art Unit 2629

Continuation of 11, does NOT place the application in condition for allowance because: 1. In response to applicant's argument that Kammerer fails to teach wherein the damping circuit inhibits the intensity of the interaction between the element M and the proximity switch 8 in response to the element M being moved into the proximity of the proximity switch (Remarks, page 8). Examiner respectfully disagrees. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

2. Under these facts Bilotti teaches a switch which is magnetic pole insensitive is described. The switch includes a Hall effect sensor coupled to a threshold circuit which provides an output signal indicative of the proximity of a magnet, and hence a magnetic field, to the Hall effect sensor regardless of the orientation of the magnet to the Hall effect sensor (abstract).

3. Bilotti fails to teach an inhibitor as claimed by applicant.

4. However, Kammerer teaches an inhibitor, or damping circuit, that selectively inhibits the intensity of interaction between said element and said detector. Kammerer states in col. 5, lines 1-15,

"If a proximity switch of the type considered, with which resistor Rx serves to set the individual activation distance between the active surface of the feeler head and the movable element to be monitored, is used to monitor the safety devices on machines a defect could have disastrous consequences. It is not, however, possible for any damage to be done if a damping is simulated and a relay controlled by the proximity switch drops out since in this case a machine fault is being simulated and the machine cannot start or is switched off. If, however, oscillation is simulated despite damping actually taking place, which is, for example, the case if one of the transistors T 3, T 4 or T 6 has been deleted, the machine can still start despite the fault; this could lead to severe damage to the machine or even injury to personnel. For this reason it has already been suggested that a damping circuit be associated with the proximity switch 8 or its oscillator; a damping of the oscillator could then take place, if necessary periodically, for the purposes of testing whether such a damping actually results in a change in the signal at the output of the proximity switch, such a change in signal showing the correct functioning of the proximity switch." (emphasis added)

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Bilotti to include the use of selectively inhibiting reception of the signal interaction in response to the detected reception as taught by Kammerer in order to improved testing and evaluation circuit which allows a continuous monitoring of trouble-free operation of a proximity switch as stated in (col. 1, lines 30-37 of Kammerer).

Claims 14 and 15 are rejected for the same reasons stated in claims 10 and 11